

NTSB Order No. EA-4263

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of October, 1994

Respondent.

Docket SE-13114

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on August 12, 1993, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 91.123(b), 91.129(h), and

6439

91.13(a).² No sanction was proposed due to respondent's filing of an ASRP³ report. We deny the appeal.

Respondent was the pilot in command of Business Express Airline Flight 661 from Albany, NY to LaGuardia Airport. Respondent was taxiing the aircraft from the hangar to the gate, and his First Officer was handling communications with ATC. On leaving the hangar, ATC directed the aircraft to hold short of runway 28 (which had to be crossed to reach the gate). Exhibit J-1 at 5:38.⁴ ATC repeated this direction in two other conversations with the aircraft. Id. at 6:31 and 7:47.

²§ 91.123(b) provides:

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC [air traffic control] instruction in an area in which air traffic control is exercised.

§ 91.129(h) reads:

Clearances required. No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

§ 91.13(a) provides:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³Aviation Safety Reporting Program.

⁴All times are elapsed times from initial transmission. Exhibit J-1.

Respondent testified that he heard the 5:38 and 6:31 hold short instruction. Tr. at 70-72. He further testified that, because he did not hear the end of the 7:47 instruction (which again directed the aircraft to hold short of runway 28), he asked his First Officer whether they were cleared to cross 28. Tr. at 74. The First Officer said yes, and they did so without incident.

Respondent offers two arguments on appeal: his violation of the clearance should be excused because he reasonably relied on the advice of his First Officer that a clearance to cross the runway had been given; and he did not violate § 91.13(a) because the operation was neither careless nor reckless.

1. Reliance on the First Officer. Administrator v. Fay & Takacs, NTSB Order EA-3501 (1992), summarizes our precedent on this issue. We explained (slip opinion at 9):

As a general rule, the pilot-in-command is responsible for the overall safe operation of the aircraft. If, however, a particular task is the responsibility of another, if the PIC has no independent obligation (e.g., based on operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.

Here, we cannot find that respondent had no reason to question his First Officer's advice. Fewer than 5 minutes passed between the first instruction and the crossing of the runway. Respondent heard two instructions to hold short of runway 28 and did not testify that he heard an instruction to proceed across. He had only flown with the First Officer once or twice. Tr. at

68. Despite his other activity at the time,⁵ a doubt should have been raised in respondent's mind and he should have asked more questions, if not of ATC then of his First Officer. Indeed, respondent admitted that there was some uncertainty in his mind as to whether they had been cleared to cross the runway. Tr. at 83. His obligation as an ATP is to do more in this circumstance than assume his First Officer is correct.⁶

2. Section 91.13(a). Respondent argues that any misplaced reliance is not a justifiable basis for concluding he was careless or reckless. Respondent notes that there is no definitive regulation on this subject, but it requires the exercise of judgment and that misjudgment should not impose an added violation.

Respondent misunderstands the nature of the § 91.13(a) charge here. A violation of an operational regulation is sufficient to support a finding of a "residual" or "derivative" § 91.13(a) violation. Administrator v. Pritchett, NTSB Order EA-3271 (1991) at footnote 17, and cases cited there. Even had a sanction been imposed in this case, the § 91.13(a) violation would have had no effect on the amount of sanction, because of its "residual" status, Administrator v. Buller, NTSB Order EA-

⁵Respondent simply was taxiing for repositioning, not an overburdensome activity and not one that would have prevented him from checking with ATC.

⁶Moreover, respondent was easily able to ascertain whether a clearance had been given. And, in asking the First Officer whether they had been cleared, he acknowledged his own responsibility to comply with clearances. Fay & Takacs, supra.

2661 (1988).⁷

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is denied.

HALL, Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Member VOGT did not concur and submitted the following statement.

⁷In none of his replies to the ATC instruction did respondent's First Officer read it back. His response was either "Thank you" or "Very good." *Id.* at 5:45, 6:43, and 7:52. At the hearing, respondent argued that ATC contributed to the violation in its failure to require proper readbacks. Because respondent does not, on appeal, pursue this argument, we need not resolve it here. We note, however, that ATC had no reason to believe that the clearance to hold short had not been received and understood. Compare Administrator v. Fromuth and Dworak, NTSB Order EA-3816 (1993).

Member Vogt's Dissent in Administrator v. Valentine

The respondent was justified in relying on the first officer's assurance that they had been cleared to cross runway 28.

"If a pilot not handling radio communications does not hear or understand a radio transmission, he may, in certain circumstances, rely on the advice of the pilot working the radio as to the transmission's content. However, ... this should not be extended to situations where the pilot who seeks to rely on the radio operator has reason to doubt the accuracy of the advice given by the other pilot." Administrator v. Chaille, NTSB Order No. EA-3643 (1992), aff'd, Docket No. 93-1001 (1st Cir. Oct. 29, 1993).

Respondent had no reason to doubt the first officer. He heard the controller's two prior instructions to hold short of runway 28, and knew that they would subsequently be cleared to cross. Respondent was also aware that there had been another transmission, and he received a clear and certain assurance from the first officer that it contained the clearance. In addition, before crossing runway 28 respondent checked for traffic and saw none. The controller's previous instruction to hold short, alone, is insufficient reason to find that respondent should have doubted the first officer. The majority's statement that there was some uncertainty in respondent's mind as to whether there had been a clearance to cross the runway is unfounded. Taken in context, it is clear that respondent testified that he was uncertain about the clearance before he queried the first officer. The majority's opinion would obviate any reliance on communications between crew members regarding radio transmission from controllers.

I would therefore reverse the law judge's decision and dismiss the charges against respondent.

C.W.V.